

House Bill 564

By: Representatives Dollar of the 45th, Cheokas of the 134th, and Roberts of the 154th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 16-9-20 of the Official Code of Georgia Annotated, relating to
2 deposit account fraud, so as to include the act when the accused had insufficient funds in the
3 account at the time the instrument was made and immediately stopped payment on the
4 instrument; to provide for starter checks; to make an exception for rental payments; to correct
5 cross-references; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 16-9-20 of the Official Code of Georgia Annotated, relating to deposit account
10 fraud, is amended by revising subsections (a), (e), (h), and (i) as follows:

11 "(a) A person commits the offense of deposit account fraud when such person makes,
12 draws, utters, executes, or delivers an instrument for the payment of money on any bank
13 or other depository in exchange for a present consideration or wages, knowing that it will
14 not be honored by the drawee. For the purposes of this Code section, it is prima-facie
15 evidence that the accused knew that the instrument would not be honored if:

16 (1) The accused had no account with the drawee at the time the instrument was made,
17 drawn, uttered, or delivered;

18 (2) Payment was refused by the drawee for lack of funds upon presentation within 30
19 days after delivery ~~and the;~~

20 (3) The accused had insufficient funds in the account with the drawee at the time the
21 instrument was made, drawn, uttered, or delivered and immediately stopped payment on
22 the instrument and retained the present consideration or services; or

23 (4) The accused or someone for him or her shall not have tendered the holder thereof the
24 amount due thereon, together with a service charge, within ten days after receiving
25 written notice that payment was refused upon such instrument. For purposes of this
26 paragraph:

(A) Notice mailed by certified or registered mail or statutory overnight delivery evidenced by return receipt to the person at the address printed on the instrument or given at the time of issuance shall be deemed sufficient and equivalent to notice having been received as of the date on the return receipt by the person making, drawing, uttering, executing, or delivering the instrument. A single notice as provided in subparagraph (B) of this paragraph shall be sufficient to cover all instruments on which payment was refused and which were delivered within a ten-day period by the accused to a single entity, provided that the form of notice lists and identifies each instrument; and

(B) The form of notice shall be substantially as follows:

'You are hereby notified that the following instrument(s)

	Name of			
<u>Number</u>	<u>Date</u>	<u>Amount</u>	<u>Bank</u>	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	
_____	_____	_____	_____	

drawn upon _____ and payable to _____, (has) (have) been dishonored. Pursuant to Georgia law, you have ten days from receipt of this notice to tender payment of the total amount of the instrument(s) plus the applicable service charge(s) of \$_____ and any fee charged to the holder of the instrument(s) by a bank or financial institution as a result of the instrument(s) not being honored, the total amount due being _____ dollars and _____ cents. Unless this amount is paid in full within the specified time above, a presumption in law arises that you delivered the instrument(s) with the intent to defraud and the dishonored instrument(s) and all other available information relating to this incident may be submitted to the magistrate for the issuance of a criminal warrant or citation or to the district attorney or solicitor-general for criminal prosecution.'; or

~~(3)~~(5) Notice mailed by certified or registered mail or statutory overnight delivery is returned undelivered to the sender when such notice was mailed within 90 days of dishonor to the person at the address printed on the instrument or given by the accused at the time of issuance of the instrument."

"(e)(1) In any prosecution or action under this Code section, an instrument for which the information required in this subsection is available at the time of issuance shall constitute

1 prima-facie evidence of the identity of the party issuing or executing the instrument and
 2 that the person was a party authorized to draw upon the named account. ~~To~~ With the
 3 exception of the instance wherein the instrument is a starter set of checks, to establish this
 4 prima-facie evidence, the following information regarding the identity of the party
 5 presenting the instrument shall be obtained by the party receiving such instrument: the
 6 full name, residence address, and home phone number.

7 ~~(1)~~(2) Such information may be provided by either of two methods:

8 (A) The information may be recorded upon the instrument itself; or

9 (B) The number of a check-cashing identification card issued by the receiving party
 10 may be recorded on the instrument. The check-cashing identification card shall be
 11 issued only after the information required in this subsection has been placed on file by
 12 the receiving party.

13 ~~(2)~~(3) In addition to the information required in this subsection, except where the
 14 instrument is a rental payment to a landlord for a residence, the party receiving an
 15 instrument shall witness the signature or endorsement of the party presenting such
 16 instrument and as evidence of such the receiving party shall initial the instrument."

17 "(h)(1) Any party holding a worthless instrument and giving notice in substantially
 18 similar form to that provided in subparagraph ~~(a)(2)(B)~~ (a)(4)(B) of this Code section
 19 shall be immune from civil liability for the giving of such notice and for proceeding as
 20 required under the forms of such notice; provided, however, that, if any person shall be
 21 arrested or prosecuted for violation of this Code section and payment of any instrument
 22 shall have been refused because the maker or drawer had no account with the bank or
 23 other depository on which such instrument was drawn, the one causing the arrest or
 24 prosecution shall be deemed to have acted with reasonable or probable cause even though
 25 he, she, or it has not mailed the written notice or waited for the ten-day period to elapse.
 26 In any civil action for damages which may be brought by the person who made, drew,
 27 uttered, executed, or delivered such instrument, no evidence of statements or
 28 representations as to the status of the instrument involved or of any collateral agreement
 29 with reference to the instrument shall be admissible unless such statements,
 30 representations, or collateral agreement shall be written simultaneously with or upon the
 31 instrument at the time it is delivered by the maker thereof.

32 (2) Except as otherwise provided by law, any party who holds a worthless instrument,
 33 who complies with the requirements of subsection (a) of this Code section, and who
 34 causes a criminal warrant or citation to be issued shall not forfeit his or her right to
 35 continue or pursue civil remedies authorized by law for the collection of the worthless
 36 instrument; provided, however, that if interest is awarded and collected on any amount
 37 ordered by the court as restitution in the criminal case, interest shall not be collectable in

1 any civil action on the same amount. It shall be deemed conclusive evidence that any
2 action is brought upon probable cause and without malice where such party holding a
3 worthless instrument has complied with the provisions of subsection (a) of this Code
4 section regardless of whether the criminal charges are dismissed by a court due to
5 payment in full of the face value of the instrument and applicable service charges
6 subsequent to the date that affidavit for the warrant or citation is made. In any civil action
7 for damages which may be brought by the person who made, drew, uttered, executed, or
8 delivered such instrument, no evidence of statements or representations as to the status
9 of the instrument involved or of any collateral agreement with reference to the instrument
10 shall be admissible unless such statements, representations, or collateral agreement shall
11 be written simultaneously with or upon the instrument at the time it is delivered by the
12 maker thereof.

13 (i) Notwithstanding paragraph ~~(2)~~(4) of subsection (a) of this Code section or any other
14 law on usury, charges, or fees on loans or credit extensions, any lender of money or
15 extender of other credit who receives an instrument drawn on a bank or other depository
16 institution given by any person in full or partial repayment of a loan, installment payment,
17 or other extension of credit may, if such instrument is not paid or is dishonored by such
18 institution, charge and collect from the borrower or person to whom the credit was
19 extended a bad instrument charge. This charge shall not be deemed interest or a finance or
20 other charge made as an incident to or as a condition to the granting of the loan or other
21 extension of credit and shall not be included in determining the limit on charges which may
22 be made in connection with the loan or extension of credit or any other law of this state."

23 SECTION 2.

24 This Act shall become effective on July 1, 2007.

25 SECTION 3.

26 All laws and parts of laws in conflict with this Act are repealed.